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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. —

UNITED STATES OF AMERICA, PETITIONER

v.

SIEGFRIED RANULF TAFFS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The Acting Solicitor General, on behalf of petitioner, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit, reversing the judgment of the United States District Court for the District of Minnesota with directions to dismiss.

OPINION BELOW

The opinion in the Court of Appeals (R. 130-133) is reported at 208 F. 2d 329. A memorandum opinion of the District Court appears at pages 124-127 of the record.

JURISDICTION

The judgment of the Court of Appeals was entered on December 7, 1953 (R. 133). On January 6, 1954, Mr. Justice Clark entered an order extending

the time within which to file a petition for a writ of certiorari to and including February 5, 1954 (R. 134). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

QUESTION PRESENTED

Whether the objections of a registrant under the Universal Military Training and Service Act to participation, not in all wars, but in any war which is not approved by God, which objections are expressly based upon the doctrines expounded by Jehovah's Witnesses, require his classification as a conscientious objector.

STATUTE AND REGULATION INVOLVED

The pertinent portions of the Universal Military Training and Service Act and Regulations issued thereunder are set forth in Appendix A, *infra,* pp. 17-19.

STATEMENT

Respondent was born on August 25, 1926 (R. 44). After a series of Selective Service deferments in classifications IV-F (physical disability), I-A-P (postponed student), and III-A (Dependency) the registrant was on January 23, 1951, classified I-A (R. 17, 44, 50), and notified of this classification on October 25, 1951 (R. 50). He then appealed from the classification and asked for the special form for conscientious objectors, which he returned on November 9, 1951 (R. 54-56).

In this form he stated his objection "to participation in war waged by nations of the world in any form" (R. 57). In response to questions on the

form he asserted a belief in a Supreme Being and stated "I have a covenant obligation with Jehovah God which involves duties superior to any human relation." (R. 57) The registrant expanded this answer by explaining (R. 64):

> I have covenanted with Jehovah God to be one of his witnesses. I have covenanted with him to devote every possible effort toward serving him and preaching the good news of the coming Kingdom as explained in the Bible. By virtue of superior duties herein involved I therefore cannot, with a good conscience, serve in the armed services of any of the nations of the world, nor can I conscientiously devote time specifically to further their war efforts, since it is clear from the Scriptures that Jehovah God is not using the talent of the nations to promulgate his kingdom. * * *

In answer to further questions he stated that he relies for guidance on "The Watchtower Bible and Tract Society, Inc., acting as the legal corporate servant of Jehovah's faithful servants on earth" (R. 58). He further stated (R. 66-67):

> Jehovah's witnesses, of whom I am one, rely entirely for religious guidance upon Jehovah God, who dwells in heaven, following the instructions in Psalms 48:14. We recognize that he has his own particular means for communicating this guidance to us, which is chiefly by his word, the Bible (2 Tim. 3:16) made understandable by his Spirit or active force, and through his universal organization, of which the visible part consists of people faithfully

> serving him here on earth, for whom the Watchtower Bible and Tract Society is the legal corporate servant.

The registrant also indicated that he accepted the doctrines and instructions of the Watchtower Society by attaching to the Form Appendix J which read (R. 69):

> Jehovah God and Christ Jesus are the ruling powers thereof, and direct our work, using as the earthly instrument therefor the international headquarters of Jehovah's witnesses, which consists of the staff and institutions associated with the Watch Tower Bible and Tract Society, Incorporated. The Watch Tower Society, Inc., is the legal individual representing and serving the headquarters staff (the Bethel family) who direct the work of Jehovah's witnesses throughout the world.

Question 5 of this form reads "Under what circumstances, if any, do you believe in the use of force?" The registrant answered (R. 58):

> When God authorizes me to fight with force. The Bible indicates four occasions in which a Christian may use force. 1. In defense of their ministry. 2. In defense of their fellow witnesses. 3. In defense of his own life. 4. To protect his own home against crime or violence. See pg. 43 "U S A SSS Memorandum in reference to the classification of Jehovah's witnesses under the act and regulations."

The registrant attached to the form as Appendix L a series of official statements by, and publica-

tions of, the Watchtower Society. (R. 70-94). These statements, to which more particular reference will be made below, assert that Jehovah's Witnesses are not pacifists (R. 72); that they are not opposed to war or to the use of military force for all purposes (R. 73); and that the warfare which they believe God may order is not merely ideological warfare but involves physical violence and killing by armed forces (R. 75-76, 79-81, but cf. R. 85).

On November 19, 1951, the local board forwarded the file to the Appeal Board which, on December 3, 1951, found registrant ineligible for classification as a conscientious objector. The file was transmitted to the Department of Justice for recommendation (R. 50).

After a hearing, the hearing officer, on April 29, 1952, quoting extensively from the statements and publications submitted to the Selective Service Board by the registrant, recommended grant of the exemption (R. 97-107). He stated that the registrant "draws a distinction between wars waged by the nations of this world and wars of the theocratic kingdom ordained by Jehovah God" (R. 98-99). The hearing officer also referred to testimony of Jehovah's Witnesses and registrant's own graphs with respect to the tremendous amount of time (hours not stated by hearing officer) devoted to the study and activities as a Jehovah's Witness (R. 106-107). Registrant impressed the hearing officer, in the oral hearing "as a sincere, honest, fanatic" (R. 107). However the Department of Justice recommended to the Appeal Board that the regis-

trant should not be classified as a conscientious objector since he was not opposed to participation in war in any form (R. 108-109).

The Appeal Board sustained the 1-A classification (R. 110).[1] On June 13, 1952, the induction notice was mailed (R. 111). On August 15, 1952, registrant refused to be inducted (R. 43, 118-120). An indictment under 50 U.S.C. App. 462 was returned on September 19, 1952 (R. 4-5), and upon trial before the District Court, trial by jury having been waived (R. 6-7), the case was submitted upon the documents summarized above and upon testimony by the registrant (R. 7-12, 17-23).

The registrant testified as follows (R. 12):

> * * * To inform the people of this new arrangement, Jehovah God has raised up witnesses to bear witness to his purposes. Their express duty, superior to any human relation, is to tell people of what Jehovah is doing, to point them towards God's kingdom, an actual world government as the one and only hope of peace, happiness and security of mankind in general, and to show from the Scriptures and by personal example what the requirements are for becoming part of the new world arrangement. I have covenanted with Jehovah God to be one of his witnesses. I have covenanted with him to devote every possible effort

[1] The Court of Appeals states that the ruling of the local draft board is based upon the ground (1) that registrant would use force "in defense of his life, property, or fellow Jehovah Witnesses" and (2) that registrant believed in "theocratic wars" (R. 131). We do not find the basis of the board's ruling stated in the record.

toward serving him and preaching the good news of the coming kingdom as explained in the Bible. By virtue of superior duties herein involved I therefore cannot, with a good conscience, serve in the armed services of any of the nations of the world, nor can I conscientiously devote time specifically to further their war efforts, since it is clear from the Scriptures that Jehovah God is not using the talent of the nations to promulgate his Kingdom. To the contrary it is clear from the Scriptures rather that it is in spite of the nations that he establishes his kingdom on the earth. (Psalm 2; Jer. 25:26, 31; Zeph. 3:8) For one who has covenanted with Jehovah, a breaking of this covenant would necessarily be entailed by engaging in action which is contrary to God's purposes, with a punishment of death as the penalty. (Rom. 1:31, 32)

The registrant argued his own case after both parties had rested and during that argument the following occurred (R. 19):

The Court: You have made some distinction between opposition to war. There is no opposition on the part of the Jehovah Witnesses to war as such. They do not oppose one nation fighting another, but they are opposed to participation in war.

The Defendant: A person who is opposed to war—a pacifist is opposed to war. A person like that has an attitude of mind opposing all wars. He refuses all military training and advocates settlement of international disputes by arbitration. He is just opposed to the war for

itself. Jehovah Witnesses don't mind if others want to fight. * * *

And again (R. 20):

The Court: Is it fair to say you feel you are a conscientious objector because if you went to war it would interfere with your carrying out of duties as one of Jehovah's Witnesses?

The Defendant: Yes. My duties are superior to any other duty.

The Court: In other words, you feel that your leisure time should be devoted to carrying on Jehovah Witness work rather than participating in the armed services. That is why you are opposed to participation?

The Defendant: Not our leisure time—all the time, every possible moment.

The Court: In other words, the taking of human life as such, or the killing of other people in actual combat does not necessarily disturb your conscience. You are opposed to war just the same as you are opposed to any other activity that would take you away from your preaching work, is that about it?

The Defendant: We are opposed to killing not ordained by God. That distinction is made in here. We do have conscientious objection to killing contrary to God's law. If it were God's law to kill, then we are not opposed to killing, in a completely abstract sense.

And finally (R. 21-22):

The Defendant: * * * I submit, Your Honor, that the framers of this law, when they made this law, they had no intention that a

conscientious objector, in order to be one, had to be opposed to war ordained by God or had to be opposed to killing which God ordained. They didn't have that in mind. I respectfully submit that.

The Court: Do you recognize in history that there have been wars that God ordained?

The Defendant: Yes.

The Court: Which ones?

The Defendant: All wars before Christ's time.

The Court: What about wars since Christ's time?

The Defendant: None ordained by God.

The Court: You only believe in wars in the Bible.

The Defendant: Theocratic wars, yes.

The Court: There are a lot of wars in the Bible you don't blame onto God?

The Defendant: There are a lot of wars in the Bible which are not ordained by God.

The trial judge, while finding registrant to be a "sincere follower" of Jehovah's Witnesses and finding that he believed in duties superior to those arising from human relationship (R. 23), also found that registrant was not opposed to participation in war (R. 25) but opposed only if the Jehovah's Witnesses did not decide that the particular war—like much of the war recounted in the Old Testament—was "carrying out God's will" (R. 24). The judge also pointed out in a memorandum (R. 124-127) that the purpose of the exemption of conscientious objectors was not to prevent mere inter-

ference with spiritual avocations (R. 125), and repeated (R. 126):

> Jehovah's Witnesses are not opposed to war except that they reserve the right to determine which war is in furtherance of God's commands. They determine, or at least the defendant herein has determined, that the present emergency is not of any concern to him because it is simply a conflict in which Nations are involved and it is not a war that is in furtherance of God's commands. Tomorrow a conflict may involve the Christian world which would, if not opposed, destroy every vestige of Christian civilization as we now understand it. There is nothing in the belief of the Jehovah's Witnesses which would prevent them, or any of them, from wholeheartedly supporting such a war if any member thereof believed it was in furtherance of God's kingdom. * * *

Registrant was accordingly found guilty and sentenced to two years' imprisonment (R. 26, 122).

The Court of Appeals, however, held that "the appeal board, in accepting the opinion of the Assistant Attorney General, was applying an erroneous standard" in that a "person's willingness to use force in self-defense is not a valid objection to denial of conscientious objector status" (R. 132). The court further stated that Congress required conscientious objection only to "flesh and blood conflict between nations" and not to "theocratic wars—that is, wars carried on by the immediate direction of God" (R. 132-133). The court sup-

ported the latter conclusion by stating that in the statutory phrase "opposed to participation in war in any form," the words "in any form" related, not to "war" but to "participation" (R. 133).

SPECIFICATIONS OF ERRORS TO BE URGED

The Court of Appeals erred in holding that the objections of a registrant under the Universal Military Training and Service Act to participation, not in all wars, but in any war which is not approved by God, which objections are expressly based upon the doctrines expounded by Jehovah's Witnesses, require his classification as a conscientious objector.

REASONS FOR GRANTING THE WRIT

We do not here seek review of the holding of the court below that the expressed willingness of the registrant and other Jehovah's Witnesses to use force, even to the extent of killing, in self-defense or in defense of home, family, or associates, does not of itself exclude them from the classification of conscientious objectors. The Department of Justice in its instructions to hearing officers for conscientious objector cases has taken the same position. See Appendix B, *infra*, pp. 20-24. See *Annett* v. *United States*, 205 F. 2d 689 (C. A. 10). Nor do we seek review of the determination that this particular registrant was sincere in the beliefs expressed by him and a *bona fide* member of Jehovah's Witnesses. Nor do we argue that belief in an abstract, ideological, or spiritual war of good against evil, by God against Satan, disqualifies the believer

from exemption from service as a conscientious objector.[2] However, we read the record here as demonstrating that this registrant, in accordance with doctrines accepted by Jehovah's Witnesses generally, is not opposed to active participation in actual physical shooting war between rival organized armies so long as the particular war is favored by God as he and Jehovah's Witnesses interpret God's will. On this basis, it is submitted that the exemption provided by Congress in Section 6 (j) of the Act (Appendix A, *infra*, p. 17) for those who are "conscientiously opposed to participation in war in any form" does not apply to this registrant.

This case is particularly important because, although the individual registrant adopted the views in issue as his own personal views, he also made clear that they were identical with the doctrines adopted by Jehovah's Witnesses generally, and supported this position by including in his file publications of the Watchtower Bible and Tract Society, Inc., which coincide with his views. Thus, the issue in this case concerns not only this particular defendant in this particular criminal prosecution, but it also concerns the thousands of Jehovah's Witnesses whose objections coincide with the tenets of their religious organization.[3]

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[2] *United States* v. *Hartman*, decided January 8, 1954 (C.A. 2), upheld the claim of conscientious objection by a member of Jehovah's Witnesses on the ground that the wars in which he was willing to participate were not "flesh-and-blood" wars. The record in that case leaves in doubt the basis for his classification by Selective Service.

[3] No accurate figures are available as to the number of Jehovah's Witnesses who can be expected to claim exemption as conscientious objectors on this basis. In the past some have

The Department of Justice, in carrying out its functions under Section 6 (j) of the Act to aid appeal boards on conscientious objector cases, while recognizing that individual members of Jehovah's Witnesses may be conscientious objectors, has taken the position that adherence to the doctrines published in the Watchtower does not in itself constitute "opposition to war in any form." See Appendix B, *infra*, pp. 20-24. Thus it is apparent that the issue is clearly drawn and that it is an important one in the administration of the Universal Military Training and Service Act as it applies to Jehovah's Witnesses generally.

The record is replete with denials that Jehovah's Witnesses are pacifists, or are opposed to war as such (R. 19-20, 21, 58, 72-74, 77, 79). Not only did the registrant state (R. 20):

> We are opposed to killing not ordained by God. That distinction is made in here. We do have conscientious objection to killing contrary to God's law. If it were God's law to kill, then we are not opposed to killing, in a completely abstract sense.

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asserted exemption on the ground that they are ministers or have adduced other bases for postponement, deferment, or exemption. See, *e.g.*, *Dickinson* v. *United States*, 346 U. S. 389. However, it is to be anticipated that many will, as they have in the past, base their claim to exemption from service squarely on the same grounds as the defendant herein, particularly in view of the publication by the Witnesses of a detailed pamphlet entitled *"Memorandum in Reference to the Classification of Jehovah's Witnesses under the Act and Regulations,"* prepared by Hayden C. Covington, General Counsel for Jehovah's Witnesses, and submitted to the Director of Selective Service in November of 1950.

but he adopted as his own the views expressed in the Watchtower (R. 73):

> In all that history of almost six thousand years the record fails to show Jehovah's Witnesses accusable of "opposition to war or to the use of military force for any purpose", which is the definition of pacifism.

This is a denial of the indispensable statutory requisite for conscientious objection, *i.e.*, opposition to war for any purpose.

The court below misinterpreted the record as indicating that the wars which were not opposed by Jehovah's Witnesses were not "flesh and blood war between nations" (R. 133). This construction of the record probably arises from the fact that this registrant, and Jehovah's Witnesses generally, express their views in religious, rather than legal, terms. It is difficult to ascertain when they are speaking figuratively and when literally, particularly since it is not unusual in religious expression to use military terms without meaning ordinary armed conflict, as in the hymn "Onward Christian Soldiers" or in the organization of the "Salvation Army". However, a careful reading of this registrant's own testimony and of the materials from the Watchtower to which he refers make it abundantly clear that the wars to which Jehovah's Witnesses do not object are actual flesh and blood wars. There can be no doubt that the battles described in the Old Testament, which are acknowledged to be theocratic wars, were conflicts in which armies vied

against each other with such arms as were available with the purpose and effect of killing each other (R. 22, 73-74, 76, 79-80).

The issue is then narrowed to whether or not the limitation to wars approved by God is sufficient to keep Jehovah's Witnesses within the class exempted by Congress. Here again the record indicates that God's approval is to be deduced from the pronouncements of the Watchtower Bible and Tract Society (R. 66-67, 69). In other words, a Jehovah's Witness does not rely upon Congress to determine what wars he shall engage in, but instead relies upon his religious organization (or perhaps his conscience (R. 71)) to determine whether a war is a good war or a bad war. Obviously this is not a basis upon which *universal* military service and training can operate. Such a selective opposition to war was clearly not within the contemplation of Congress. It is in essence not different from opposition to a war because, for political or religious reasons, a person thinks the country is in a particular instance on the wrong side. Nothing in the letter or spirit of the enactment would support such a virtual right of appeal to various religious sects from each decision on war made by the Congress.

There is one other feature of the record which deserves attention. In certain portions of the registrant's testimony, and also in the Watchtower literature referred to by him, it appears that opposition to service may not arise so much from opposition to war as it does from the fact that military

service would interfere with the devotion of his efforts to the duties of Jehovah's Witnesses (R. 20, 57, 64, 90).[4] This objection obviously stems not from opposition to war but from devotion to the particular religious tasks undertaken by the individuals. But Congress has not exempted individuals from service on that ground. Exemption for conscientious objections is to be distinguished from occupational deferment for which this registrant has not even attempted to qualify.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

ROBERT L. STERN,
Acting Solicitor General.

FEBRUARY, 1954.

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[4] In fact the doctrine of Jehovah's Witnesses seems to require a refusal to recognize any temporal authority interfering with their work (R. 88, 70):

> Because they are wholly dedicated to God by their vows to him through Christ, Jehovah's Witnesses are according to God's Word no part of this world which is governed by the political systems. For this important Bible reason they tell officials of the government that they conscientiously object to serving in any military establishment or any civilian arrangement that substitutes for military service. * * *
>
> * * * * *
>
> The objection to military service is not based on grounds of pacifism but rather, in contradistinction to it, on grounds of conscientious objection to entangling ourselves in the affairs of the nations of the world, and hence having to break covenant to Jehovah, since the nations are subject to the power of the evil one (1 John 5:19) * * *

APPENDIX A

STATUTES AND REGULATION INVOLVED

Universal Military Training and Service Act, 62 Stat. 604, 612, 622; 65 Stat. 75, 86:

Section 6(j) [50 U.S. App., Supp. V, 456(j)]:

Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political, sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate * * *. Any

person claiming exemption from combatant training and service because of such conscientious objections shall, if such claim is not sustained by the local board, be entitled to an appeal to the appropriate appeal board. Upon the filing of such appeal, the appeal board shall refer any such claim to the Department of Justice for inquiry and hearing. The Department of Justice, after appropriate inquiry, shall hold a hearing with respect to the character and good faith of the objections of the person concerned, and such person shall be notified of the time and place of such hearing. The Department of Justice shall, after such hearing, if the objections are found to be sustained, recommend to the appeal board that (1) if the objector is inducted into the armed forces under this title, he shall be assigned to noncombatant service as defined by the President, or (2) if the objector is found to be conscientiously opposed to participation in such noncombatant service, he shall in lieu of such induction be ordered by his local board, subject to such regulations as the President may prescribe, to perform for a period equal to the period prescribed in section 4(b) such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate * * *. If after such hearing the Department of Justice finds that his objections are not sustained, it shall recommend to the appeal board that such objections be not sustained. The appeal board shall, in making its decision, give considera-

tion to, but shall not be bound to follow, the recommendation of the Department of Justice together with the record on appeal from the local board. * * *

Section 12(a) [50 U.S.C. App. Supp. V, 462(a)]:

* * * Any * * * person * * * who * * * refuses * * * service in the armed forces * * * or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title, or rules, regulations, or directions made pursuant to this title * * * shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment * * *.

Selective Service Regulations, Title 32, C.F.R. (1951 Rev.):

Section 1622.14. *Conscientious objector available for civilian work contributing to the maintenance of the national health, safety, or interest.* (a) In Class I-O shall be placed every registrant who would have been classified in Class I-A but for the fact that he has been found, by reason of religious training and belief, to be conscientiously opposed to both combatant and noncombatant training and service in the armed forces.

APPENDIX B

Addendum No. II to Instructions to Hearing Officers Appointed Pursuant to the Universal Military Training and Service Act

"Opposition to War in Any Form"

Members of the Jehovah's Witnesses sect present some of the most difficult conscientious objector cases which come before Hearing Officers under the applicable provisions of the Universal Military Training and Service Act. Many of them rely upon the dogma of that sect with respect to war and pacifism as outlined in various publications of the Watchtower Bible and Tract Society. Among these publications are the February 1, 1951, issue of the *Watchtower* magazine, the November 1, 1939, issue of this periodical and a pamphlet entitled "Neutrality." They present a defense of the battles of the Old Testament and the future Battle of Armageddon as warfare ordained by Jehovah in behalf of theocratic government. Articles appearing in this literature state emphatically that members of the organization are not pacifists and that they are permitted to fight and kill in defense of themselves, their families, their property, and their spiritual brethren. They may fight whenever "Kingdom interests" are jeopardized, but they should be neutral in worldly conflicts.

It might be helpful to incorporate at this point, several statements appearing in the February 1, 1951, issue of the *Watchtower* referred to above. The following excerpts which are taken from an article entitled "Why Jehovah's Witnesses Are Not Pacifists" reveal in unmistakable terms the

church's thinking on the question of pacifism and its relation to conscientious objection:

> "The smearing of us as extreme pacifists is without foundation and is a deliberate lie to provoke prejudice against us . . . Extreme pacifism is not our preachment. We are not pacifists . . . to charge that we are extreme pacifists is a lie.
>
> "As defined by Webster's New International Dictionary pacifism means 'opposition to war or to the use of military force for any purpose; especially an attitude of mind opposing all war, emphasizing the defects of military training and cost of war and advocating settlement of international disputes entirely by arbitration.' Such pacifism not even the Bible itself can be charged with teaching and neither can Jehovah's Witnesses who stick most scrupulously to the Bible."

The article continues by tracing the history of Jehovah's Witnesses to Biblical times and then declares: "In all that history of almost six thousand years, the record fails to show Jehovah's Witnesses accusable of 'opposition to war or to the use of military force for any purpose' which is the definition of pacifism." There follows a discussion and justification of the wars engaged in by the pre-Christian witnesses of Jehovah. Such conduct is explained and defended in this manner:

> "But you ask how can they be conscientious objectors and not at the same time pacifists? They are not against war between the nations and they do not interfere with the war effort of the nations nor with anyone who can conscien-

tiously join in such efforts. *They fight only when God commands them to do so because then it is theocratic warfare.*"

These sentiments are reiterated in other Jehovah's Witnesses literature although in different language. Notwithstanding these pronouncements on the subject of war and pacifism, the church maintains that any member who professes to be a conscientious objector does so as a matter of individual conscience and as a result of his independent study of Scripture.

In view of the stand which the church has adopted on this question, the Department of Justice has taken the position that mere membership in this sect is not a basis for granting or denying a conscientious-objector claim. It is entirely possible for a registrant to have an individual personal religious belief that war in any form is ungodly and mere membership in the Jehovah's Witnesses sect will not negate that belief.

The burden of proof is of course upon the registrant to show by clear and convincing evidence that he comes within the provision of section 6(j) of the Universal Military Training and Service Act. However, it should not be assumed that the registrant has adopted his church's views on warfare as his own, unless he has in some way affirmatively so indicated. He can do this in several ways. He may incorporate in his file any of the periodicals referred to above or other literature of his sect bearing on this subject in order to explain statements appearing in his Conscientious Objector Form. He may also embrace these pronouncements by his own declaration appearing in SSS Form No. 150 or other correspondence in his file. They may be de-

veloped by the Hearing Officer during the course of the hearing.

No absolute standard or criterion can be established in this type of claim. Each case stands or falls on its individual merits. It can only be suggested that the Hearing Officer examine very carefully the entire record in order to ascertain whether the particular registrant will participate in warfare under any circumstances. If the registrant's expressions on this point are ambiguous or contradictory then questions should be propounded to him during the course of his personal appearance which will resolve any uncertainties in this regard. If the Hearing Officer feels that the registrant has indicated sincere religious convictions which depart from official church doctrine insofar as it touches upon the question of opposition to participation in war "in any form" then the claim should be sustained. However, if it is concluded that the registrant's statements are merely an acceptance of his church's teaching as it relates to participation in war in any form, the registrant is not entitled to exemption as a conscientious objector.

It should be noted that if a registrant indicates a willingness to participate in theocratic warfare or war in any other form he is not entitled to a conscientious-objector classification; however, his approval of the use of force under certain circumstances, which force is not in the nature of warfare, does not *per se* disqualify him for such classification. Personal defense of himself, his family, or even his brethren to the extent of killing is an element to be considered in connection with the sincerity of his claim, especially where such claim is based upon the Commandment "Thou shalt not

kill," but would not, unless the defense of his brethren is construed to be a common defense amounting to warfare, defeat his claim if the Hearing Officer concludes from all the evidence that his claim is made in good faith.

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No. 576

UNITED STATES OF AMERICA, PETITIONER,

vs.

SIEGFRIED RANULF TAFFS, RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

HAYDEN C. COVINGTON

Counsel for Respondent

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MISCELLANEOUS CITATIONS

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Matthew 22:21 9
John 18:36 9
Acts 5:29 9

Selective Service System, *Conscientious Objection,* Special Monograph No. 11, Vol. I, pp. 29-66, 147, 150, 155, Washington, Government Printing Office, 1950 23

Watchtower, The, February 1, 1951, Brooklyn, New York, Watchtower Bible and Tract Society, Inc. 6, 7, 11

Supreme Court of the United States

OCTOBER TERM, 1953

No. 576

UNITED STATES OF AMERICA, PETITIONER,

vs.

SIEGFRIED RANULF TAFFS, RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

MAY IT PLEASE THE COURT:

Now comes Hayden C. Covington, attorney for the respondent, and opposes the granting of the writ of certiorari because the judgment of the court below is plainly right, as will now be shown.

QUESTION PRESENTED

The act, Section 6(j) (50 U. S. C. App., Supp. V, § 456 (j)), provides for the classification of registrants as conscientious objectors who, because of religious training and

belief, are conscientiously opposed to participation in war in any form. The undisputed evidence showed, and the court below found, that respondent was a sincere member of Jehovah's Witnesses and was conscientiously opposed to his participation in war in any form, and that his objections were based on religious training and belief as one of Jehovah's Witnesses.

The record showed that respondent is not opposed to the theocratic wars of the ancient nation of Israel, before it was cast off by Jehovah God, and the apocalyptic war, described as the battle of Armageddon. The record also showed that respondent believed that Christians may not now and will never participate in armed rebellion or warfare against any nation of the world, even in theocratic warfare such as the battle of Armageddon because henceforth participation in God's army, used to destroy the present wicked system of things, will be confined to the angelic forces of heaven, and Christians on earth will not be required to participate or fight at all or use carnal weapons.

The record shows the religious belief of respondent confines his participation in the army of Christ to preaching as an ambassador of Jehovah, the Almighty God.

The question presented, therefore, is whether Congress intended to include the wars of the ancient nation of Israel and the approaching battle of Armageddon in the word "war" used in the statute and expanded the word "participation" to banish from the protection of the act one of Jehovah's Witnesses who participates by preaching and announcing the imminence of such apocalyptic war, but who conscientiously opposes participation in war between the nations of this world.

Taking this case in for review will mean an extensive and unnecessary heresy hearing in this Court on the religious beliefs of Jehovah's Witnesses, which have been made final and unreviewable by this Court through an ecclesiastical determination and the First Amendment to the United States Constitution.

STATEMENT

Taffs was born in Rutland, Vermont, on August 25, 1926. [7, 46, 49][1] He registered with Local Board 58, Syracuse, Garfield County, New York, on September 2, 1948. [7, 44-45] A classification questionnaire was mailed to him on September 23, 1948. [46] Taffs filled it out properly. [46-50] He did not show in it that he was a minister or a conscientious objector. [47, 49] He showed that he had six years of elementary schooling, two years of junior high school and four years of high school, having been graduated. [48] He showed that he had attended the University of Vermont and then was attending the New York School of Forestry in Syracuse University, studying wood technology. [48] He showed that he was preparing for the occupation of a wood technologist and that he would receive his bachelor of science degree from that college at a later date. [48]

On November 16, 1948, Taffs was placed in Class I-A-P. [8, 50] On January 10, 1949, he was ordered to take a preinduction physical examination. [51] This was transferred by order of the state director. [51-52] On June 1, 1949, he was classified I-A. [8, 50] On September 19, 1949, he notified his local board of a change of address from Syracuse to Saint Paul. He also informed the board that on September 10, 1949, he had married. He added that he was a "research fellow" at the University of Minnesota. [52-53]

On July 18, 1950, Taffs notified his local board in Syracuse of another change of address and again reminded the board that he was married on September 10, 1949. [53] On August 8, 1950, the local board deferred him because of his marital status. He was placed in Class III-A. [50] On January 23, 1951, he was classified I-A, thus making him liable for unlimited military service. [50] He was not notified of this classification until August 25, 1951. [50] On November

[1] Figures appearing herein within brackets refer to pages of the printed Record.

5, 1951, Taffs wrote the local board stating that he wished to "appeal for classification IV-E," the conscientious objector classification. He requested an extension of time so that he might file the conscientious objector form. [55] The board answered stating that it would wait for arrival of the conscientious objector form. [56]

The conscientious objector form was received on November 9, 1951. [56-57] With it Taffs sent a statement showing that in the notice received from the local board he was not told that he had a right to submit additional information. He said he learned from a friend on November 2, 1951, that he could submit additional information to the local board, and that he confirmed this on November 5. He explained the delay in not submitting the additional information within the ten-day period following notice of the classification. [55-56] The conscientious objector form was properly filled out by Taffs. He answered the questions fully. He supported his answers with extensive documentary evidence. [56-94]

Taffs' draft file was sent to the appeal board by the local board. [50, 95] On December 3, 1951, the entire file was sent to the Department of Justice for an investigation and hearing on the conscientious objector claim. [50] The investigation by the Department of Justice was completed and the file forwarded to John F. D. Meighen, the hearing officer of the Department of Justice. [98, 107]

On April 7, 1952, the hearing officer conducted a hearing. [98] On April 29, 1952, he made his report and recommendation to the Department of Justice that the conscientious objector classification claimed by Taffs should be granted. [97-107]

The report of the hearing officer shows that Taffs was ignorant of the beliefs of Jehovah's Witnesses until the spring of 1949. [104] The file shows that Taffs attended the University of Vermont from 1943 to 1944. [59] While at that university he was in the ROTC. Concerning this he

said: "I had at that time no conscientious objections to war." [60-61, 104]

Taffs' mother had raised him as an Episcopalian. [60] His wife was an Episcopalian. [106] He first learned of Jehovah's Witnesses in the spring of 1949. Then at Syracuse a door-to-door preacher for the group called at his home. Taffs asked the minister to return to his home for a few study sessions, which were "discontinued a short while later." [64-65]

After he moved to Minnesota he voluntarily approached a street preacher of Jehovah's Witnesses and arranged for a Bible study because he had found it increasingly difficult to follow the tenets of the Episcopal Church. [55] The studies in the Bible continued weekly for several months. He used as his text the Bible and a study book of Jehovah's Witnesses entitled "Let God Be True". He learned the main doctrines of the Bible taught by Jehovah's Witnesses. [65] He then began regular analytical study of the Bible through the *Watchtower* magazine. After his home Bible study had continued six weeks he began attending the church meetings of Jehovah's Witnesses. [65]

The hearing officer found that he intensified his study with Jehovah's Witnesses during the time that he pursued his graduate study at the University of Minnesota. [104] He found, as Taffs told him, that he made a trip from Saint Paul to New York as a delegate to the international assembly of Jehovah's Witnesses in 1950. [58, 67] The hearing officer found that Taffs became a definite "member" during August, 1950. Taffs showed that he specially consecrated his life to do the will of Jehovah God at that convention. It was on Thursday, August 3, 1950. [65, 67]

Taffs showed that since his dedication he had increased his training and strengthened his belief. He continued attending the meetings, attended the theocratic ministry school and participated in the door-to-door preaching and street missionary work. He also conducted home Bible studies as a minister weekly. [66]

The secret investigative report of the Federal Bureau of Investigation was summarized by the hearing officer. [105-106] It showed that the intensive and brilliant work of Taffs as a wood technologist and graduate student was neglected after he became one of Jehovah's Witnesses. [105-106] The hearing officer found that the only criticism made by the witnesses interviewed by the FBI agent was "that he gave so much of his time to study and public work for the Jehovah's Witnesses that it interfered to a marked extent with his university studies." [106] The hearing officer found that instead of giving Taffs a doctor's degree the University of Minnesota notified him he would receive only a master's degree because of his lack of intensive study in wood technology caused by his sincere and increased work with Jehovah's Witnesses. [106]

Both the hearing officer and the FBI report showed that Taffs made "an excellent impression," was "thoroughly sincere" and had "given very faithful and intelligent study" to the beliefs and work of Jehovah's Witnesses.

The hearing officer found that Taffs "clearly set forth his reasons for claiming exemption from combatant and noncombatant training and service." [106] He said this was very quietly done at the hearing. [106]

The hearing officer quoted statements made by Taffs describing the nature of his conscientious objections to both combatant and noncombatant military service. [99-100, 103-104] The material prepared by Taffs, quoted from by the hearing officer, appears in the record. [56-71] He also referred to certain publications of the Watchtower Bible and Tract Society, Inc., the legal governing body of Jehovah's Witnesses. These were in Taffs' file. They were referred to and adopted by him as the basic beliefs of Taffs. [99]

The main publication of the Watchtower Society relied on by the hearing officer and the judge of the trial court appears in the record. [72-94] The *Watchtower* magazine of February 1, 1951, relied on contains two articles. One is

entitled "Why Jehovah's Witnesses Are Not Pacifists." [72-81] The other is entitled "Pacifism and Conscientious Objection—Is There a Difference?" [81-94] These articles shall now be summarized.

I.

"Why Jehovah's Witnesses Are Not Pacifists"

In 1950 Jehovah's Witnesses assembled in convention at Yankee Stadium, New York city. Ten thousand foreign delegates had difficulty in clearing immigration to attend the assembly because of the false charge that they were extreme pacifists. The American delegates unanimously passed a regret and protest—a million copies of which were distributed.

The definition of "pacifist" found in Webster's *Dictionary* is relied upon. That definition of pacifist does not fit a true Christian. [72-73] Jehovah's Witnesses began with Abel. A long list of witnesses for Jehovah have records in theocratic warfare showing they were not pacifists. The exploits of Abraham, Moses, Joshua, Barak, Gideon, Jephthah, Samson, Samuel and David demonstrate this. [73-74]

The fighting experiences of Nehemiah, Mordecai and Esther while in captivity in Babylon and Persia further prove Jehovah's Witnesses of old were not pacifists. The experiences of Daniel under King Darius the Mede and Nehemiah under Cyrus and Ahasuerus, the Persian kings, show they were not pacifists. [74-76] The military exploits of all of these famous witnesses for Jehovah were a part of theocratic warfare. However, such witnesses did not fight for Babylon, the Medes or the Persians. They fought under the direction of God for the theocratic nation of Israel. Since the fall of the Jewish nation and the advent of Christianity the warfare of his Christians has not extended to military weapons. [77-78]

Because of this change Jehovah's Witnesses are, however, not pacifists. They are conscientious objectors to war and the "defense efforts" of Christendom and the rest of the world. The objections of Jehovah's Witnesses are based on God's Word, the Bible. Jehovah's Witnesses are neutral toward the wars between the nations. They do not campaign against the war efforts of the nations, and they do not oppose those who conscientiously participate in the war efforts. [77-78]

Jehovah's Witnesses take the same neutral stand toward war as did Jesus. He commanded against the use of the sword. Jehovah's Witnesses, while neutral to war, are not pacifists engaged in resisting war or interfering with the wars between nations. [78-79]

Jehovah's Witnesses do not oppose Jehovah's great war that will destroy the nations of the Devil's World at Armageddon. [79] They proclaim this coming destructive warfare against the world. [80] Christ Jesus will lead the invisible forces of Jehovah and bring about the destruction of the nations of this evil world as Jehovah's Field Marshal at Armageddon. [80-81]

II.

"Pacifism and Conscientious Objection —Is There a Difference?"

Jehovah's Witnesses will have no part in the violent warfare of this world and will not participate in the armed forces of Jehovah at Armageddon. This great battle will be fought by the angelic forces of Jehovah led by Christ Jesus. Jehovah's Witnesses, while declaring and preaching the battle of Armageddon, follow the rule laid down by Christ Jesus. That rule did away with the Mosaic law of retaliation. This is the philosophy of "eye for eye and tooth for tooth." Instead of this rule the modern-day Christians, Jehovah's Witnesses, follow the rule of love of God and love of neighbor. Christians do good to those who speak

and do evil against them. There is no retaliation by Jehovah's Witnesses. [81-83] The killing of a burglar who breaks in at night is justified. The killing of a thief who breaks in by day is condemned. [82-85]

The rule of love and of no retaliation stated in the sermon on the mount is only part of the basis of conscientious objection of Jehovah's Witnesses. [85]

Jehovah's Witnesses are Scripturally authorized to defend themselves according to the law of the land. When attacked they can Scripturally resist attack by the use of force. They do not arm themselves or carry carnal weapons. They will not retreat when attacked at their homes or when at meetings of their church but will retreat when attacked on public property or on the property of others. In such situation they shake the dust off their feet and do not give what is holy to dogs or throw pearls before swine. [85]

Jesus said: "Render therefore unto Caesar the things which are Caesar's; and unto God the things that are God's." (Matthew 22:21) [86] God, and not "Caesar," is the Giver of life. The life of a Christian is dedicated to God and cannot be transferred to Caesar. The lives and service of Jehovah's Witnesses belong to God, and not to Caesar. [86-87] No man can serve two masters, says Jesus' sermon on the mount. The dedication of Jehovah's Witnesses to God is a relation to the "Supreme Being involving duties superior to those arising from any human relation." This is a quotation from the Selective Service Act of 1948. Jehovah's Witnesses take the position of the apostles of Jesus: "We must obey God as ruler rather than men."—Acts 5:29, *New World Translation.* [87]

The words of Jesus about paying back to Caesar the things that are Caesar's were limited by Jesus to payment of taxes and were not extended by him to military service. [87-88] This is emphasized by what Jesus told a representative of Caesar, Pilate. He said: "My kingdom is no part of this world. If my kingdom were part of this world, my attendants would have fought that I should not be delivered

up to the Jews." (John 18:36, *New World Translation*) [88] Jesus also stated that the world hates Jehovah's Witnesses because they are neutral. [88-89]

Jehovah's Witnesses are minister-ambassadors. They occupy a neutrality and exempt status from military service as did the priests and Levites in the nation of Israel. [90-93] Even theocratic warfare does not require a minister to war; but Jehovah God protects his ministers. This principle is followed by Jehovah's Witnesses in dealing with the warfare of modern-day nations. [90-91]

The only weapons of warfare that Jehovah God permits his witnesses to use are spiritual weapons: oral words, printed words and the sword of the spirit, which is the word of God contained in the Bible. [92-93] Jehovah's Witnesses are Christian soldiers enlisted in God's army and as such cannot desert his forces. They cannot break their agreement to keep ministering and preach the gospel. To do so would mean their death. [92-93]

Jehovah's Witnesses are an "earth-wide brotherhood" society. It follows that there cannot be slaying of one Christian by another Christian. This spiritual brotherhood is another basis for the conscientious objections of Jehovah's Witnesses. This is only a partial statement of the conscientious objections of Jehovah's Witnesses; it is enough, however, to prove the consistent neutrality of Jehovah's Witnesses and their lack of pacifism. [94]

Taffs in his own words adopted the above statements appearing in the *Watchtower* magazine as his beliefs. [71] This he did in a summary of his conscientious objections to participation in war. He stated that his objections were not pacifistic but were conscientious objections based on a covenant with Jehovah. [70] He showed that he could be a conscientious objector without being a pacifist; that he was neutral to warfare of this world; that he was no part of this world although residing in it. He showed that he was also a Christian soldier whose weapons did not include carnal weapons. He emphasized that he could not serve in

two armies. He explained that the use of carnal weapons by the nation of Israel is no precedent for him. He showed that even the nation of Israel did not use carnal weapons for meddling in the wars of other nations, to which they were neutral. He emphasized that he is an ambassador of God's kingdom. He stated he was neutral and followed the precedent fixed by early Christians who refused to do military service for Caesar. [71]

The recommendation of the hearing officer made to the Department of Justice was that Taffs' "claimed exemption from both combatant and noncombatant training and service in the Armed Forces because of conscientious opposition to participation in either by reason of religious training and belief is genuine and should be granted." [107]

The Assistant Attorney General rejected the recommendation of the hearing officer. He advised the appeal board that Taffs should be denied the conscientious objector status. He said the claim for exemption failed because "his 'objection to military service is not based on grounds of pacifism, but rather in contradistinction to it, on grounds of conscientious objection to entangling ourselves in the affairs of the nations of the world, and hence having to break covenant to Jehovah, since nations are subject to the power of the evil one, from which power we have been set free.'" [108-109]

The Assistant Attorney General specifically referred to the February 1, 1951, issue of *The Watchtower*, above summarized. [109] He concluded that the beliefs described in these articles showed that Taffs' basis for objection "is not within the meaning of Section 6 (j), Universal Military Training and Service Act." [109]

On May 29, 1952, the appeal board accepted the recommendation of the Department of Justice, rejected the advice of the hearing officer and denied Taffs his claim for classification as a conscientious objector. It put him in Class I-A, making him liable for unlimited military service. [95]

On June 6, 1952, the file was returned from the appeal

board to the local board. [50] Notification of the action by the appeal board was mailed to Taffs on June 6, 1952. On June 13, 1952, Taffs was ordered to report for induction. On June 19, 1952, he was transferred to Saint Paul for induction. [8, 50-51] Taffs refused to submit to induction. [7, 8, 51]

ARGUMENT

The Solicitor General says that *United States* v. *Hartman,* — F. 2d — (2d Cir. Jan. 8, 1954), approving and following the opinion in this case, *Taffs* v. *United States,* was correctly decided. See pages 11-12 of the petition. He then attempts to distinguish the *Hartman* decision from this one. The facts and the record, as far as the beliefs of Jehovah's Witnesses and each registrant is concerned, are identical. (See pp. 7-10, above.)

Hartman did not limit his approval of an abstract or ideological war of good against evil. He, like Taffs, approved the wars of the ancient nation of Israel and the coming battle of Armageddon. He, like Taffs, believed that such apocalyptic war will be one where there will be visible death and bloodshed at the hands of the invisible and angelic warriors of Jehovah God. Both believed that such is theocratic warfare in which they are forbidden to participate.

The Court of Appeals for the Second Circuit made the same holding on the same set of facts as was made by the court below. (See, infra, this brief, pp. 15-17.) Since no review is considered by the Government to be necessary in the *Hartman* case, then none should be allowed here.

Misunderstanding and misinterpretation of the record and views of Jehovah's Witnesses is shown in the first complete sentence on page 12 of the petition for writ of certiorari. See also pages 14-16 of the petition. The record and the publication relied upon by the Government do not support what the Solicitor General says. They contradict

what he says. Read them and see for yourself. [72-94] They show genuine conscientious objection to participation in any war that is fought between the United States and any other nation or between any two or more nations of this world.

The trouble with the argument of the Solicitor General is his consideration of the religious views of respondent appearing in the record. He does not attempt to gather the meaning of each of the articles relied upon by respondent from its entirety. Parts of the articles and bits of the record are cut away from their natural setting. Then a colored meaning, different from the true intent of the writer and speaker, is wrapped around the isolated pieces. This process of determining the meaning of written documents has been condemned.—*United States* v. *One Book Ulysses,* 72 F. 2d 705 (2d Cir.)

It is the responsibility of a reader to judge a document, not according to parts of the document that can be cut out and considered apart from the context. The obligation of a judge is to ascertain the intent of the author after reading the entire document. The articles appearing in the *Watchtower* magazine do not support the conclusion reached by the Government. Had the Solicitor General applied the proper rule of law about interpretation of documents a different conclusion would have been reached.

The rule of proper interpretation of literature has been stated by the Court. Mr. Justice Brandeis in *Schaefer* v. *United States,* 251 U. S. 466, 482, said: "The nature and possible effect of a writing cannot be properly determined by culling here and there a sentence and presenting it separated from the context. In making such determination, it should be read as a whole."

Much is stated in the petition about the testimony given by Taffs at the trial. See pages 6 to 11 of the petition. While there is nothing inconsistent between the position taken by Taffs before the hearing officer or the draft board and that taken in the trial court, it should be considered,

not alone, but together with what he said that appears in the administrative record. This Court is restricted to the record made in the appeal board in determining whether there is basis in fact for the denial of the conscientious objector status. See *Cox* v. *United States,* 332 U. S. 442.

What has been said above about the erroneous basis on which the Solicitor General proceeds in the interpretation of the religious beliefs of Taffs appearing in the record and documents involved also applied to what is stated by the trial judge. [23-26, 42-43, 123-127, especially 23-25 and 124-127]

The trial judge misinterpreted the beliefs of respondent. His statements quoted by the Solicitor General, at page 10 of the petition, should be disregarded.—*United States* v. *One Book Ulysses,* 72 F. 2d 705 (2d Cir.); *Schaefer* v. *United States,* 251 U. S. 466, 482.

This Court ought to interpret the writings *de novo* and for itself, without the taint put upon them by the Government and the trial court, as did the court below.

The respondent admits that this case is an important one. Had it been decided adversely to him the importance of it would have been urged, along with a showing of error, to the Court in a petition for writ of certiorari. But importance alone is not enough to justify granting the writ. The fact that the Department of Justice has administered the duties placed on it under Section 6 (j) by an unreasonable interpretation of the law does not require that this Court review the case. (See pages 13, 20-24 of the petition.)

If so, then all any administrative agency would have to do would be to place an unreasonable interpretation on an act of Congress and administer it in an unreasonable manner, then have a court declare it to be unreasonable and a foundation would have been built on which to get the case into this Court. Jurisdiction here should not depend on the whim of the arbitrary administrative officer in this case who chose to defy the law in making an adverse recommendation to the district draft appeal board. [108-109]

There can be no doubt that the holding of the court below is correct. It is the same as *United States* v. *Hartman*, — F. 2d — (2d Cir. Jan. 8, 1954). Since the petitioner admits that decision should not be reviewed then this judgment ought not to be reviewed. It is important to quote here extensively from the opinion in *United States* v. *Hartman*, — F. 2d — (2d Cir. Jan. 8, 1954). In that case the Court of Appeals for the Second Circuit said:

> "The Government argues, however, that there is adequate basis in fact in the record for the I-A classification which was finally given appellant by reason of:
>
> "(1) In answer to question 5 of SSS Form No. 150, 'Under what circumstances, if any, do you believe in the use of force,' appellant replied, 'In the protection of my family and Christian Brethren and when my Christian ministry is in jeopardy. Nehemiah 4:14.'
>
> "(2) Certain statements in two articles, entitled 'Why Jehovah's Witnesses Are Not Pacifists' and 'Pacifism and Conscientious Objection —Is There a Difference?' both of which appeared in the February 1, 1951, issue of 'The Watchtower' publication, and which show that Jehovah's Witnesses are not pacifists but believe in and approve of ecclesiastical or theocratic wars as described in the Bible, according to the interpretation given by Jehovah's Witnesses.[5] Do these facts afford the board a reasonable basis for reaching the con-

"[5] After his original classification in Class I-A-O by the local board, appellant wrote to the local board and forwarded to it a copy of 'The Watchtower' publication mentioned above, requesting in his letter that it be added to his file as 'some additional information.' Appellant had earlier stated in the 'Special Form for Conscientious Objector' that the Watchtower publications were one of the sources from which he had received his religious training and belief. The local board properly received the February 1, 1951, issue of 'The Watchtower' and made it a part of the file to be considered in support of appellant's religious beliefs."

clusion that appellant was not 'opposed to participation in war in any form' and denying him the status of a conscientious objector?

"Appellant's statement that he believed in the use of force to protect his family, his Christian brothers and his ministry appears to us to be no negation of his evidence that he was a bona fide member of Jehovah's Witnesses conscientiously opposed by reason of religious training and belief to participation in war in any form. In *Taffs* v. *United States,* 208 F. 2d 329 (C. A. 8, December 7, 1953), the Court, passing upon this same question, held that 'Appellant's testimony that he would use force in defense of his life, property, or fellow Jehovah Witnesses' would not support a denial of his claim for the status of conscientious objector, where other evidence of his opposition to participation in war by reason of religious training and belief was undisputed in the record. We agree with this view. See also *United States* v. *Pekarski,* 207 F. 2d 930 (C. A. 2, October 23, 1953); *Annett* v. *United States,* 205 F. 689 (C. A. 10).

"Moreover, the reference in appellant's answer to Chapter IV, verse 14, of the Book of Nehemiah provides a significant gloss and it indicates quite clearly that appellant is referring to the use of force only on the command and at the direction of God. All that Nehemiah said and did in the restoration of the walls of Jerusalem and the reestablishment of civil authority was as the emissary of God. The views here expressed by appellant are entirly consistent with his whole position as a conscientious objector.

"The Government would have us construe the words 'war in any form' to include the theocratic warfare discussed in the two articles appearing in the February 1, 1951, issue of 'The Watchtower,'

the argument being that since appellant believed in and approved of theocratic warfare, he was not opposed to 'participation in war in any form.' However, we do not believe that Congress intended such an unreasonable construction to be placed on this phrase. War, as the word is commonly understood, is a contest by force between two or more nations; it is the state or fact of one politically organized body exerting violence or force against another for the purpose of overcoming or overthrowing it. It is clear to us that Congress was legislating in regard to this type of conflict, and was not concerned with Scriptural or theocratic wars, considered as carried on by the command and direction of God. The phrase 'in any form' obviously modifies not the word 'war' but the word 'participation.' *Taffs* v. *United States, supra.* War, generally speaking, has only one form, namely, a struggle between opposing forces; whereas a person's participation therein may be in a variety of forms. We are convinced that Congress intended by this section to exempt from service in the armed forces those persons who were conscientiously opposed by reason of religious training and belief to any form of participation in a flesh-and-blood war between political entities.

"There is nothing whatever in this record to support the contention that appellant may conscientiously, at his own free choice and election, participate in any sort of war, to the extent that he wishes to do so. Had there been a finding, or any evidence to show, that his stated beliefs were mere sham and pretense, we should have a quite different case before us."

Since the Solicitor General has told the Court that there is a difference in the record in that case and the record in

this case, a copy of the record in the *Hartman* case is filed as an appendix to this brief in opposition. Compare pages 78-85 of the *Hartman* record with pages 57-62 of the record in this case. See footnote 5 of the Hartman opinion, at page 15, supra.

The *Watchtower* journal there referred to (also mentioned by Judge Medina in the quoted part of the opinion above at pages 15-16 of this brief) is the identical statement of religious beliefs relied upon by the Solicitor General for a denial of the conscientious objector status to respondent Taffs that appears on pages 72-94 of the record in this case.

Now, how can it be said that there is a difference in the two cases?

The Solicitor General roams into the forbidden field of judging religious beliefs. He criticizes the conclusions reached by Jehovah's Witnesses as a result of their religious training and belief. (See pages 14-16 of the petition.)

The argument is that because Taffs and Jehovah's Witnesses do not have pacifistic beliefs like the peace churches, they are not covered by the law. The main reason why this argument should be rejected is that it attempts to weigh the correctness of religious beliefs. This is outside the jurisdiction of the draft boards, the Department of Justice and the courts.—*United States* v. *Ballard,* 322 U. S. 78.

The expression of the religious views of Jehovah's Witnesses by the legal governing body of the group, Watchtower Bible and Tract Society, Inc., in the *Watchtower* magazine relied upon by the assistant attorney general, is an ecclesiastical determination. This religious administrative determination cannot be questioned in secular tribunals. It must be accepted as a genuine bona fide statement of conscientious objection to war. The ecclesiastical determination is binding on the draft boards, the Government and the courts.—*Kedroff* v. *Saint Nicholas Cathedral,* 344 U. S. 94; *Watson* v. *Jones,* 13 Wall. 679, 727, 728-729; *Gonzales* v. *Archbishop,* 280 U. S. 1, 16-17.

The Court cannot compare this statement of belief with the pacifistic beliefs of other religions and thus determine whether the beliefs fits the statute. The 1940 Act and the present act rejected the pacifism or peace-church definition of the 1917 Act. To do this, as suggested by the Government, also will convert the Court into a heresy tribunal. To reject religious beliefs on conscientious objection by comparison of Jehovah's Witnesses with other religious beliefs is in violation of the First Amendment to the Constitution.

All that the Court can inquire about is confined to what the act says. The act says that one is a conscientious objector entitled to the benefits of the law if he shows (1) he believes in the Supreme Being, (2) his belief imposes obligations higher than those owed to the state, (3) he opposes both combatant and noncombatant military service, and (4) his beliefs are not political, sociological or philosophical but are based on belief in God.

The hearing officer of the Department of Justice found facts showing that Taffs met all these requirements. [97-107] The law was evaded by the Assistant Attorney General on the grounds that Taffs and Jehovah's Witnesses are opposed to the wars between the nations of this world, but are not opposed to the ecclesiastical war described in the Bible as the battle of Armageddon, in which Taffs will have no part. [108-109]

This position of the Government (requiring Taffs to be opposed to the universal ecclesiastical war of Armageddon before he can get the benefits of the statute), if accepted, will make a heresy tribunal of this Court. Neither the Government nor the courts can go beyond the law passed by Congress. Congress did not make this an element of the act. Congress was concerned only with the wars between the nations. Congress did not have in mind requiring the conscientious objector to be opposed to the ecclesiastical war of Armageddon. It is to be fought by God and not by man at the end of this world.

All the talk by the Solicitor General about the proper

definition of a conscientious objector harks back to the 1917 Act. It is entirely immaterial. Both the discussions in Congress and the reports on the 1940 Act show that Congress changed the law for conscientious objectors. Under the 1917 Act the exemption was confined to members of the peace or pacifistic churches. The 1940 Act eliminated the requirement of beliefs like those of the pacifist churches. It required the status to be granted on an individual basis so long as the person based his objections to any form of participation in war on belief in the Supreme Being.

Now the objections need not be pacifistic. They are sufficient when based on religious belief or in the Bible. Neither the 1940 Act nor the 1948 Act made reference to pacifism. Both acts did not fix the religious standards of one religion as the yardstick. The conscientious objection provision extends even to members of churches whose principles do not oppose war.—*United States* v. *Everngam,* 102 F. Supp. 128 (W. Va.).

The only change that the 1948 Act made was to prevent the nonreligious political, philosophical and sociological objectors from claiming the status.

If the path of the objector is through the Bible or through the writings of the religions of Shintoists, Moslems and Buddhists, he is entitled to his conscientious objector classification. The 1948 Act protects him. The law does not prescribe any fixed path (such as pacifism) through any of the writings. It could not do so without invading religious freedom in violation of the First Amendment. To do so now by interpretation would make the draft boards and the courts a religious hierarchy to determine what is orthodox in conscientious objection. That Congress did not so intend to do!

The Department of Justice has misinterpreted Section 6(j) of the act. [108-109] The clause of the act that has been misinterpreted reads: " . . . is conscientiously opposed to participation in war in any form." The modifying phrase "in any form" applies to the word "participation"; it does

not modify the word "war." If it is held to modify the word "war," then the courts must give the word "war" a reasonable interpretation. Certainly Congress was not legislating on Scriptural and spiritual wars that are prophesied in the Bible to be conducted by Jehovah God. Congress was dealing with wars between the nations of earth. It had in mind legislating regarding flesh-and-blood wars that are fought by present political powers on earth. It did not have in mind spiritual wars such as that described in the Bible in the book of Revelation.

Congress intended to protect the conscientious objector having objections to participation in war, even though he was in favor of the spiritual and Scriptural wars prophetically described in the Bible that concern the time of the end. If the unreasonable interpretation placed upon the act by the Department of Justice is accepted, then it would give a basis for casting out of the protection intended by Congress every religious person who has conscientious objections to participation in war between the nations purely because he believes in the Lord's Prayer and the battle of Armageddon spoken of in Revelation. Such a situation is intolerable. It leads to fantastically unreasonable results.

Congress had in mind limiting its exemption to persons who are conscientiously opposed (based on religious grounds) to *any form of participation* in military service or wars between the nations. It was the conscientious objection to any form of military service participation that was exempted. Congress intended to limit the exemption to those refusing to participate in any form; it was for this reason that the words "in any form" were used. Congress did not intend to permit those words to be used to discriminate.

Congress did not intend to allow the Department of Justice to hold a religious inquest and probe into the religious beliefs of the registrants about spiritual wars of God-ordained wars of the future. Congress intended to protect

the religious objector. It purposed to prohibit discrimination against the objector because he might have peculiar or unique religious views that do not agree with those of the majority in the community. The words "in any form" were not intended to be used to conduct a heresy trial. Neither the courts nor the Department of Justice are authorized to say what is orthodox in the field of religion.

Congress provided also for the limited participation by the conscientious objector as a noncombatant soldier in Section 6(j) of the act. What it was protecting by the words "in any form" used in Section 6(j) was the full conscientious objector to military participation *in any form,* by the use of the words "in any form." It was against *participation* that the full conscientious objector provisions of the act were passed for. It was to make all participate except those who objected to participation in any form in war on conscientious religious grounds.

Congress did not intend to limit the status by a strange meaning placed upon the words "in any form" by the Department of Justice. That would make inconsistency and ambiguity appear on the face of the act. If Congress intended to make it necessary to have objections to war "in any form" then the limited military service afforded the conscientious objector willing to do noncombatant military service in the armed forces provided by Congress would have been defeated. Congress did not contradict itself and write Section 6(j) of the act with a patent ambiguity in it. Congress was right. The Department of Justice is wrong. The respondent is right and is supported by a fair and reasonable reading of the act.

The construction that has been placed upon the act by the Department of Justice and the Solicitor General is unreasonable. It works a forfeiture against a large segment of religion in the United States. The interpretation of the act would place Jehovah's Witnesses entirely beyond the reach

of the law. This would be notorious discrimination of the worst sort.

It was well known to the Congress, the nation, the Government and the courts of the United States that Jehovah's Witnesses are conscientiously opposed to noncombatant military service. They were not unaware that these objections of Jehovah's Witnesses are based on a belief in the supremacy of God's law above obligations arising from any human relationship. These facts bring Jehovah's Witnesses within the plain words of the act. Twisting the words of the law and discoloring the act subvert the intent of Congress not to discriminate.

The strict construction of the act advocated by the Government was not intended by Congress. Congress had in mind a liberal interpretation of its provision for conscientious objectors to protect the religious objector. The records of the hearings in Congress, the reports and the act all prove a broad exemption was intended. Congress had in mind that objection to war is a part of the religious history of this country. Conscientious objection was recognized by Massachusetts in 1661, by Rhode Island in 1673 and by Pennsylvania in 1757. It became part of the laws of the colonies and states throughout American history. It finally became part of the national fabric during the Civil War and has grown in breadth and meaning ever since. (See Selective Service System, *Conscientious Objection,* Special Monograph No. 11, Vol. I. pp. 29-66, Washington, Government Printing Office, 1950.) So strongly was the principle of conscientious objection imbedded in American principles that President Lincoln and his Secretary of War thought that conscientious objectors had to be recognized. This is impressed upon us by Special Monograph No. 11, Vol. I, *supra,* at page 43: "At the end of hostilities Secretary of War Stanton said that President Lincoln and he had 'felt that unless we recognize conscientious religious scruples, we could not expect the blessing of Heaven.'"

CONCLUSION

The writ of certiorari, prayed for by the Solicitor General, should be denied.

Respectfully,

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